*** THE HON'BLE MR JUSTICE RAMESH RANGANATHAN**

+ WRIT PETITION NO : 12756 of 1994

-

% 24-06-2005

S.Chandraiah Petitioner

Vs.

$ Indo-Swing Limited Respondent

! Mr.V.Jagapathi

^ Counsel for respondent No.1: G.P. for Social Welfare
Counsel for respondent No.2: Mr.P.Nageswatra Sree

< Gist:

>Head Note

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1)1996(6) SCC 417

2) 2002(5) ALD 599

3) 1999(1) SCC 517

4) 2003(1) ALD 143 (DB)

5) (2005) SCC 134

6) VOL. 48 (1971) FJR 183 (SC)

7) VOL. 48 (1971) FJR 286 (SC)

8) AIR 1975 SC 661

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE TWENTY FOURTH DAY OF JUNE
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO : 12756 of 1994

Between:

S. Chandraiah S/o Pentaiah
Indo-Swing Ltd., Hyderabad, Hyderabad

..... PETITIONER

AND

1 The Presiding Officer Addl. Industrial Tribunal-cum-Addl. Labour Court, A.P.
Chandra Vihar Buildings, M.J. Road, Hyderabad
2 Indo-Swing Ltd., rep. by Factory Manager
Narsapur Road, Balanagar,
Hyderabad

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction particularly in the nature of Writ of Certiorari calling for the records relating to the award passed in I.D.No.251/93 dt: 29-12-1993 from the file of the Addl. Industrial Tribunal-cum-Addl. Labour Court, AP, Hyderabad as notified in G.O.Rt.No.1017 dt: 10-5-1994 and after perusing the same, quash it as illegal and invalid and consequently direct the 2nd Respondent to re-instate the Petitioner into

service with full back wages and continuity of service and all other attendant benefits

For the Petitioner: MR.V.JAGAPATHI

For the Respondent No.1: GP FOR SOCIAL WELFARE

For the respondent No.2 : Sri P.Nageswara Sree

The Court Made the Following :

THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.12756 of 1994

JUDGMENT:

In this writ petition, the petitioner – workman, challenges the award of the Additional Industrial Tribunal-cum-Addl. Labour Court, Hyderabad in I.D.No.251 of 1993 dated 29-12-1993 and seeks reinstatement into the services of the 2nd respondent company with full back wages and continuity of service.

The petitioner was formerly a Maintenance Fitter in the 2nd respondent – company. On 5-6-1989 the petitioner's scooter is alleged to have been checked on his return from duty and found to contain some bearings. A police complaint was lodged in C.C.No.194/89 against the petitioner and one Sri Muralikrishna. The petitioner is said to have confessed his guilt on 6-6-1989 and to have submitted his resignation (which the petitioner contends was under coercion). The petitioner was issued a charge memo on 13-6-1989 to which he is said to have given his explanation on 22-6-1989, (received by the 2nd respondent on 24-6-1989), whereby he is also said to have revoked his resignation submitted earlier on 6-6-1989. The 2nd respondent, issued a telegram on 22-6-1989, accepting the resignation of the petitioner. The 2nd respondent informed the petitioner vide letter dated 29-6-1989 that since his resignation was accepted on 22-6-1989 his request for revocation of the same was not accepted. The petitioner was acquitted by the Judicial First Class Magistrate, Medchal by order in C.C.No.207/89 dated 5-8-1991.

The petitioner filed an application under Section 2-A(2) of the Industrial Disputes Act before the Additional Industrial Tribunal-cum-Additional Labour Court, Hyderabad in I.D.No.251 of 1993, seeking reinstatement with continuity of service and back wages. Before the Addl. Industrial Tribunal, the petitioner contended that he had

neither submitted any resignation voluntarily nor had given any letter confessing his guilt and that he had withdrawn them all in his explanation dated 22-6-1989. He contended that several letters were taken from him, threatening to hand him over to police, and that in the absence of any enquiry being held pursuant to the charge memo dated 13-6-1989, the petitioner could not have been terminated from service, more so in view of his acquittal in the criminal case instituted by the 2nd respondent against him.

The case of the 2nd respondent – company before the Industrial Tribunal was that the petitioner had voluntarily resigned and left the services of the 2nd respondent, and since there was no termination of service, the petition filed under Section 2A(2) of the Industrial Disputes Act was not maintainable. The 2nd respondent contended that the petitioner along with one Murali Krishna had committed theft on 5-6-1989, that 14 new bearings were recovered from the dicky of his scooter on the next day in his presence and that a police complaint was lodged against the petitioner in C.C.No.194/89. The 2nd respondent contended that the petitioner had, in a statement, confessed his guilt on 6-6-1989, had submitted his resignation and that the management had accepted the resignation taking a lenient view instead of proceeding with the enquiry. It was reiterated by the 2nd respondent that no force or pressure was exerted on the petitioner to submit his resignation and that since his resignation was accepted on 22-6-1989 the question of permitting him to withdraw the same did not arise.

Before the Addl. Industrial Tribunal, the petitioner examined himself as W.W.1 and marked Exs.W-1 to W-10. The management officials of the 2nd respondent were examined as M.W.1 to M.W.4 and documents M-1 to M-4 were marked as exhibits.

The Addl. Industrial Tribunal, on a detailed appreciation of the evidence on record, disbelieved the petitioner's contention that he was threatened to give a letter of resignation. The Additional Industrial Tribunal held that if this were so, nothing prevented the petitioner from protesting when he was forced to write the resignation letter and that his silence for 15 days after he submitted the said letter of resignation itself indicated that he was not forced to submit his resignation. The Additional Industrial Tribunal also held that since the petitioner's resignation was accepted, the management need not permit him to withdraw the resignation, that the petitioner had

resigned voluntarily, and that the management had considered and accepted it without proceeding with the domestic enquiry, that acquittal in a criminal case was not a bar for the management to deal with the matter, that the evidence let in, on behalf of the management before it, conclusively proved that the petitioner was found to be in possession of stolen property and that his explanation in this regard was not acceptable. The Addl. Industrial Tribunal found force in the submission of the management that it lost confidence in the petitioner to re-employ him. The Addl. Industrial Tribunal held that the management was justified in accepting the resignation submitted voluntarily by the petitioner and even otherwise, the evidence on record clearly established that the petitioner had committed theft of the company's property. The Addl. Industrial Tribunal did not consider it just and proper to order reinstatement of the petitioner. However, having regard to the petitioner's past experience of nearly 8 years, pendency of the case before it for about 5 years, and the petitioner's past conduct without any serious lapse, the Tribunal thought it just and reasonable for the management to provide the petitioner some compensation to enable him to start a new life and held that a sum equivalent to 2 years of last pay was just and reasonable compensation which the management should pay as terminal benefits. I.D.No.257 of 1993 was dismissed and a sum equivalent to last drawn pay of two years was ordered to be paid to the petitioner by the 2nd respondent management

Sri V.Jagapathi, learned counsel for the petitioner in support of his submissions that the award of the Addl. Industrial Tribunal-cum-Addl. Labour Court in I.D.No.251/1993 was liable to be set aside, raised the following contentions:

a. The conduct of the 2nd respondent company in issuing a charge memo calling for the explanation of the petitioner was itself proof that the letter of resignation submitted by the petitioner on 6-6-1989 was not accepted;

b. On issuance of a charge memo and calling for the explanation of the petitioner in reply thereto, the earlier letter of resignation submitted by the petitioner became redundant and could no longer be acted upon;

c. Acquittal of the petitioner in the criminal case disentitled the respondent from terminating his services on the same charges;

d. In the absence of any domestic enquiry being held, the petitioner could not have been terminated from service

e. The very fact that the respondent was directed to pay two years wages, (which amount was paid to the petitioner during the pendency of writ petition), itself supported the petitioner's contention that he was coerced to submit his resignation and that acceptance of resignation was ante dated.

It is well settled that while exercising its Certiorari jurisdiction under Article 226 of the Constitution of India and exercising its powers of judicial review against orders/awards of statutory Tribunals, the High court neither acts as a Court of appeal nor does it re-appreciate the evidence on record. It is only in cases where there is no evidence, the findings of statutory tribunals are perverse or there is manifest error on the face of the record that the High Court exercises its Certiorari jurisdiction. In the present case, the Addl. Industrial Tribunal, on appreciation of the evidence on record, held that the resignation submitted by the petitioner was voluntary and was not under coercion. The petitioner's contention that acceptance of his resignation was antedate cannot be accepted inasmuch his resignation was accepted by way of telegram on 22-6-1989 followed by letter dated 22-6-1989 informing the petitioner that his resignation had been accepted and he ceased to be in the employment of the company with immediate effect. Issuance of the telegram dated 22-6-1989, whereby the petitioner's resignation was accepted, not being disputed by the petitioner, even if the letter dated 22-6-1989, whereby acceptance of the petitioner's resignation was also communicated to him is ignored and the petitioner's contention that the said letter was antedated is found to have some basis, acceptance of the petitioner's resignation by telegram dated 22-6-1989 would by itself result in his ceasing to be an employee of the 2nd respondent-company. Once the letter of resignation is accepted, subsequent revocation thereof is of no consequence and refusal by the 2nd respondent to accept the said revocation cannot be said to be illegal or unjust. An employee is entitled to withdraw his resignation prior to its acceptance or prior to the date on which the resignation comes into force. He is however not entitled to contend, as a matter of right, that his revocation of resignation is required to be accepted or that he should be taken back into service despite his resignation having been accepted by the employer.

The contention that on issuance of a charge memo and on calling the

petitioner's explanation in reply thereto the earlier letter of resignation becomes redundant, cannot be accepted. From the evidence on record it is clear that while the charge memo was issued on 13-6-1989, the letter of resignation dated 6-6-1989 was accepted subsequent thereto on 22-6-1989. Mere issuance of a charge memo and calling for the explanation of the charge sheeted employee in reply thereto, does not preclude the employer from accepting the resignation nor can it be said that, on issuance of the charge memo and calling for an explanation, the earlier letter of resignation becomes redundant and cannot be acted upon. While it was always open to the employer to refuse to accept the resignation of an employee and proceed with the domestic enquiry, if the applicable certified standing orders or the contract of employment empowered it to do so, mere issuance of a charge memo does not preclude the employer from accepting the letter of resignation, voluntarily submitted by an employee, instead of proceeding with the domestic enquiry. Acceptance of resignation neither amounts to imposition of punishment nor does it cast any stigma on the petitioner.

The contention of the petitioner's counsel that acquittal in the criminal case disentitles the employer from terminating the service of an employee, when the charges involved are the same, cannot also be accepted. In the first place, acceptance of the letter of resignation submitted by the petitioner, would not amount to termination of his service. Even otherwise, mere acquittal in a criminal case does not disentitle the employer from either initiating disciplinary proceedings against an employee for the same charges or to impose punishment, including termination of service, pursuant thereto, since criminal proceedings stand on a different footing and are different from disciplinary proceedings.

In **STATE OF RAJASTAN v. B.K.MEENA**, the Supreme Court at para – 17 held thus:

"There is yet another reason. The approach and the objective in the criminal proceedings and the disciplinary proceedings is altogether distinct and different. In the disciplinary proceedings, the question is whether the respondent is guilty of such conduct as would merit his removal from service or a lesser punishment, as the case may, whereas in criminal proceedings the question is whether the offence registered against him under the Prevention of Corruption Act (under the Indian Penal Code, if any) are established and, if established, what sentence should be imposed upon him. The standard of proof, the mode of enquiry and the rules governing the enquiry and trial in both the cases are entirely distinct and different. Staying of disciplinary proceedings pending criminal proceedings, to repeat, should not be a matter of

course on a considered decision. Even if stayed, the decision may require reconsideration if the criminal case gets unduly delayed"

In **COMMISSIONER OF POLICE, HYDERABAD CITY, GOVERNMENT OF ANDHRA PRADESH v. GOPAL**, a Division Bench of this Court speaking through B.Sudershan Reddy, J at para 22 held:

"It is true and very well settled that acquittal in a criminal case by the competent Court of criminal jurisdiction does not confer any automatic right upon the delinquent employee for his reinstatement into the service, even if the prosecution and the departmental enquiry is based on same set of facts. The nature of proof required in a criminal case for establishing the charges and the departmental proceedings cannot be the same, merely because the same set of facts are involved. The misconduct under the given service rules or regulations is entirely different from that of an offence under Indian Penal Code or any penal statues, as the case may be. On the same set of facts, the disciplinary and the criminal Court can come to different conclusions with regard to the allegations made against the delinquent officer. The conclusions so reached operate in different fields. The consequences that flow from such conclusions are also different"

The contention that in the absence of a domestic enquiry being held, the petitioner could not have been terminated from service cannot also be accepted. The Labour Court held that resignation of the petitioner was voluntary and that resignation was accepted by the 2nd respondent. Resignation from service does not amount to termination necessitating conducting of a domestic enquiry prior thereto. It is only where termination from service is as a measure of punishment that an enquiry is required to be conducted. While it is true that no domestic enquiry was conducted by the 2nd respondent pursuant to the charges levelled against the petitioner, vide charge memo dated 13-6-1989, the fact, however, remains that evidence was adduced in this regard both by the petitioner – workman and the 2nd respondent employer, before the Addl. Industrial Tribunal. Even in cases where no enquiry has been held, the employer has the right to satisfy the Tribunal with respect to the validity of it action in terminating its employee from service. Even in cases where no enquiry has been held the Tribunal cannot straight away set aside the order of termination and direct reinstatement into service with back wages. In order to satisfy itself about the legality and validity of the punishment of termination from service, the Tribunal has to give an opportunity to the employer to adduce evidence to justify its action and then to given an opportunity to the workman to rebut the said

evidence of the employer. It is the duty of the Tribunal to go into the evidence, examine and satisfy itself whether the action taken by the management was correct or not. In **NEETA KAPLISH v. PRESIDING OFFICER, LABOUR COURT**, the Supreme Court at para 24 held thus:

"In view of the above, the legal position as emerges out is that in all cases where enquiry has not been held or the enquiry has been found to be defective, the Tribunal can call upon the management or the employer to justify the action taken against the workman and to show by fresh evidence that the termination or dismissal order was proper. If the management does not lead any evidence by availing of this opportunity, it cannot raise any grouse at any subsequent stage that it should have been given that opportunity, as the Tribunal, in those circumstances, would be justified in passing an award in favour of the workman. If, however, the opportunity is availed of and the evidence is adduced by the management, the validity of the action taken by it has to be scrutinized and adjudicated upon on the basis of such fresh evidence"

In the present case while no enquiry was held by the 2nd respondent pursuant to the charge memo issued on 13-6-1989, evidence was let in before the Tribunal with regards the act of misconduct committed by the petitioner and the Tribunal, on appreciation of the evidence on record, held that the charge, that the petitioner was found in possession of stolen property, was conclusively proved. Even if the fact that acceptance of resignation does not amount to termination of service is ignored, once the charge of theft or being in possession of stolen property is held to have been proved, it cannot be said that the employer is not justified in terminating such an employee from service.

A Division Bench of this Court in **APSRTC, PALASA DEPOT v. MUDIDINA KRISHNA MOORTHY** at paragraph 6 held thus:

> "It is equally well settled by a catena of decisions of the Supreme Court and this Court (See: Municipal Committee v. Krishnan Behari (1996) 2 SCC 714, state of U.P. v. Nand Kishore Shukla of A.P. (1996) 7 SCC 114, to cite a few) that in cases of corruption, misappropriation, pilferage of public funds, the minimum penalty is removal from service"

The Apex Court in MAHINDRA AND MAHINDRA LTD. v. N.B.NARAWADE in paragraph 20 held thus:

"It is no doubt true that after introduction of Section 11-A in the Industrial

Disputes Act, certain amount of discretion is vested with the Labour Court/Industrial Tribunal in interfering with the quantum of punishment awarded by the management where the workman concerned is found guilty of misconduct. The said area of discretion has been very well defined by the various judgments of this Court referred to hereinabove and it is certainly not unlimited as has been observed by the Division Bench of the High Court. The discretion which can be exercised under Section 11-A is available only on the existence of certain factors like punishment being disproportionate to the gravity of misconduct so as to disturb the conscience of the Court, or the existence, or the past conduct of the workman which may persuade the Labour Court to reduce the punishment. In the absence of such factor existing, the Labour Court cannot by way of sympathy alone exercise the power under Section 11-A of the Act and reduce the punishment"

The last contention urged by Sri V.Jagapathi, learned counsel for the petitioner, that the direction of the Tribunal, for payment of two years wages, itself proves that the petitioner was coerced to submit his resignation. The Addl. Industrial Tribunal held that the resignation submitted by the petitioner was voluntary, that the said resignation was accepted by the employer, that revocation of the resignation subsequent to its acceptance need not be accepted by the employer, that the charge of possession of stolen property was proved and that the petitioner had committed theft of company's property. Further, the Tribunal also found force in the contention of the 2nd respondent that they had lost confidence in the petitioner.

It is well settled that the plea of the employer of his loss of confidence in the concerned employee, who had mis-utilized his position rendering it undesirable to retain him service, even in cases where termination or removal from service is held to be invalid, would militate against the award of reinstatement and would amount to forcing the employee on an unwilling employer. The Supreme Court in several cases has accepted the plea of the employer, of loss of confidence in the workman, and in lieu of reinstatement has directed payment of wages for a certain period.

It has been held that where an employer loses confidence in his employee, particularly in respect of a person discharging an office of trust and confidence there can be no justification for directing his reinstatement (**Francis Klein & Co (P) Ltd. v. Workmen**. While the normal rule is that in cases of invalid orders of dismissal industrial adjudication would direct reinstatement of a dismissed employee, nevertheless there would be cases where it would not be expedient to adopt such a course. Where for instance the dismissed employee held a position of confidence

and trust and the employee had lost confidence in the concerned employee, reinstatement is not fair to either party (**Ruby General Insurance Co. Ltd., V. P.P.Chopra**). An employee who believes or suspects that his employee, particularly one holding a position of confidence, has betrayed the confidence, can, if the conditions and terms of employment permit, terminate his employment and discharge him without any stigma attaching to the discharge. But, such belief or suspicion of the employee should not be a mere whim or fancy. It should be *bona fide* and reasonable. It must rest on some tangible basis and the power has to be exercised by the employer objectively, in good faith with due care and prudence **(L.MICHEL v JOHNSON PUMPS LTD)**.

The present case is not even one where the Tribunal has held that the charges levelled against the workman were not proved. The Addl. Industrial Tribunal on the other hand, has categorically held that the petitioner was guilty of holding stolen property and that he had committed theft of company's property. The direction for payment of last drawn wages of two years is undoubtedly, a case of misplaced sympathy. Once a serious charge of misconduct of theft and being in possession of stolen property is held proved, the Industrial Tribunal ought not, to have directed payment of two years wages.

The fact, however, remains that the award of the Industrial Tribunal has not been challenged by the 2nd respondent herein, who, I am informed, has paid the petitioner herein the amount as directed by the Tribunal. Suffice to state that the direction, as awarded, for payment of last drawn wages for two years, by the Tribunal would not lead to the inference that the petitioner was coerced to submit his resignation or that acceptance by the 2nd respondent of his resignation is antedated. This contention raised on behalf of the petitioner, is contrary to the evidence on record, the findings of the Tribunal in this regard and cannot therefore be accepted.

The writ petition fails and the same is accordingly dismissed. No costs.

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-06-2005

NOTE:

L.R. COPY BE MARKED

B/o

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To:

1.One fair copy to the Hon'ble Sri Justice Ramesh Ranganathan (for his Lordships perusal)

2. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi

3. The Presiding Officer Addl. Industrial Tribunal-cum-Addl. Labour Court, A.P. Chandra Vihar Buildings, M.J. Road, Hyderabad
4. Two C.Ds. to the G.P. for Social Welfare, High Court Buildings, Hyderabad (OUT)

5. Eight L.R. copies

6. The Secretary, A.P. Advocates Association, High Court of A.P. Hyderabad

7. Two C.D. copies